IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3158 OF 2003
IN
SUIT NO.3289 OF 2003

Supriya S.Lokhande ..Plaintiff

Vs.

Sheetal S.More ..Defendant

Mr.Jayesh Bhatt for the plaintiff

Mr.N.D.Yelkar for the defendants

CORAM : S.U.KAMDAR, J
DATED : 28TH FEBRUARY, 2006

P.C.:

1. The present suit is filed for appointment of Receiver and Injunction in respect of flat no.B/4, Ganesh Apartment, Chogale Nagar, Borivali (E), Mumbai 400 066. Some of the material facts of the present case are briefly enumerated as under:

2. The father of the plaintiff and defendant namely Barku Yashwant Tambe expired sometime in or about 1980 leaving behind widow Smt.Jayawantibai and plaintiff and defendant herein as surviving legal heirs. It is the case of the plaintiff that

after the death of the father, the flat bearing no. A 401, Matushri Park, Kulupwadi Road, Borivali (E), Mumbai 400 066 was transferred in favour of the defendant and that the plaintiff gave the consent for such transfer. It is also the case of the plaintiff that the said flat was sold on 21.12.92 by defendant no.1 and defendant no.1 purchased the suit flat on 22.12.92. It is the case of the plaintiffs that though flat is in the name of defendant and an agreement is also executed in her name, plaintiff has 1/2 share in the said property because sometime in or about 1996 the mother who had 1/3 share also expired devolving her share on plaintiff and defendant equally. Thus, the plaintiff in the present suit claims 1/2 share in the suit flat.

3. It is the case of the plaintiff that the said suit flat has been purchased out of the fund from the sale of the earlier flat. The earlier flat was sold for Rs.1,60,000/- and it is her case that the said amount is used to purchase the said suit flat which has been purchased for Rs.2,25,000/-.

4. The learned counsel for the plaintiff has fairly conceded that apart from showing that Rs.1,60,000/- has been received from the sale of earlier flat he does not have any material evidence to show that even the balance consideration of Rs.65,000/- is also contributed from the estate of the said deceased either the father or mother for purchasing the suit flat for Rs.2,25,000/-. The learned counsel for the plaintiff contends that in the aforesaid light of the fact Court Receiver, High Court, Bombay should be appointed as Receiver in respect of flat.

5. I have considered the contention of the learned counsel for the plaintiff. I am not inclined to grant relief of appointment of Court Receiver as prayed for by the plaintiff. At the outset, it must be noted that the father Barku Yeshwant Tambe expired in 1980 and the mother of the plaintiff and defendant has also expired in 1996. Suit flat has been acquired by the defendant as far back as 1992 still till 2003 no suit was filed nor any demand was made for seeking share in

the estate of the deceased. The right of the plaintiff to seek a share in the estate of the deceased accrued as far back as 1980 itself when the father died and on the father's death the suit flat was sought to be transferred in favour of the defendant herein and inspite of the aforesaid fact, for 23 years no suit is filed nor any application is made for any interim relief.

6. The learned counsel for the plaintiff states that he did not do so because her right was denied only in 2003. There is no material evidence except the averments in the plaint to show that the disputes between the parties have commenced in 2003. In any event, I am of the opinion that the plaintiff ought to have exercised its right to obtain her share in the estate of the deceased which accrued as far back as 1980.

7. Apart from the aforesaid gross delay I am also of the opinion that the plaintiff has failed to make out prima facie case. I am of the view that admittedly the earlier flat was in the name of the defendant herself though it is contended by the

plaintiff that the name of the defendant was inserted in place of the name of the father by consent of the parties but there is no material evidence produced to support the said cause. Prima facie case it is not established that fund actually is being contributed from the sale of the first flat.

8. I am also of the further opinion that in any event plaintiff has failed to establish that the balance amount of Rs.65,000/- are also contributed out of the estate of the fund. I am of the opinion that no case is made out for appointment of Court Receiver in the aforesaid facts and circumstances of the present case. In so far as other properties are concerned, the plaintiffs have made a statement except the suit flat, she is not aware of any other properties of the estate.

9. In so far as injunction is concerned, the learned counsel for the defendant gives an undertaking to this court that the defendant shall not alienate, encumber or create any third party

rights in respect of the suit flat and part with possession thereof. Undertaking accepted. The said undertaking shall remain operative till the hearing and final disposal of the suit. Motion disposed of accordingly. No order as to costs.